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May 30, 2023

*VIA ECF*

Hon. Jennifer L. Rochon  
United States District Court  
Southern District of New York  
500 Pearl Street, Room 1920  
New York, New York 10007

Re: *Andrew E. Roth v. Armistice Capital, LLC, et al.*, No. 1:20-cv-08872 (AT)

Dear Judge Rochon:

We represent Nominal Defendant Vaxart, Inc. in the above-referenced action. We write pursuant to Rule 4.B of Your Honor's Individual Practices in Civil Cases to respectfully request redaction of certain information that Defendant Armistice Capital, LLC ("Armistice") intends to file in support of a motion for summary judgment. In accordance with Your Honor's rules, we conferred with Armistice's counsel on May 30, 2023 and Armistice joins in this request. We are submitting herewith copies of the four documents with redactions and will contemporaneously file under seal unredacted, highlighted copies.

The presumption of public access to judicial documents can be overcome if countervailing factors warrant confidentiality. *See Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 120 (2d Cir. 2006); *see also Nixon v. Warner Commc 'ns Inc.*, 435 U.S. 589, 598 (1978). Sealing of records may be justified to preserve "higher values," including the need to protect confidential personal information. *Lugosch*, 435 F.3d at 124; *see also Rojas v. Triborough Bridge & Tunnel Auth.*, No. 18-cv-1433 (PKC), 2022 U.S. Dist. LEXIS 45039 at \*4 (S.D.N.Y. Mar. 14, 2022) (considering the "privacy interests" of third parties in confidential personal information). Consistent with this, courts routinely permit sealing and redaction of personally identifiable information such as personal telephone numbers or account addresses. *See, e.g., Rojas*, 2022 U.S. Dist. LEXIS 45039 at \*11-12 (permitting redaction of witness's telephone number because it "does not assist the public in monitoring or understanding the judicial process"); *United States v. Vinas*, 2017 U.S. Dist. LEXIS 72140, at \*5-6 (E.D.N.Y. May 9, 2017) (redactions of personal phone number consistent with rules permitting redaction of "personal identifying information").

Here, the exhibits include certain individuals' personal mobile telephone numbers. Those individuals are not parties to the case and their telephone numbers are neither relevant to any claim or defense, nor helpful to the public in monitoring or understanding the judicial process. *See Rojas*, 2022 U.S. Dist. LEXIS 45039 at \*11-12. This is the type of personal identifying information that Courts' permit to be redacted. *See id.* Moreover, the proposed redactions are narrowly tailored to protect the privacy interests of these individuals without burdening the public's right of access. *See id.*

For these reasons, Defendants respectfully request that the foregoing documents be filed under seal and with redactions.

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Respectfully,

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*Attorneys for Nominal Defendant Vaxart, Inc.*

cc: All Counsel of Record via ECF

The motion to file redacted versions of certain exhibits is GRANTED. Nominal Defendant Vaxart, with Armistice's consent, seeks to redact personal identifying information of non-parties, including phone numbers and account numbers in exhibits filed in connection with summary judgment. In light of the fact that courts generally permit parties to redact phone and account numbers, and other personally identifiable information, *see, e.g., Owen v. Elastos Found.*, 343 F.R.D. 268, 289 (S.D.N.Y. 2023), and because Plaintiff has not opposed this request, the Court concludes that the redactions are "essential to preserve higher values and [are] narrowly tailored to preserve that interest," *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 120 (2d Cir. 2006). Consequently, the unredacted versions of the same documents will remain under seal.

Dated: June 5, 2023  
New York, New York

**SO ORDERED.**

  
JENNIFER L. ROCHON  
United States District Judge